

**THE FOLLOWING INFORMAL ADMONITION WAS ISSUED ON  
MAY 2, 2001 BY BAR COUNSEL**

**CONFIDENTIAL**

John L. Machado, Esquire  
Law Office of Allan Toppelberg  
1444 N Street, NW  
Washington, D.C. 20005

Re: Machado/Bar Counsel  
Bar Docket No. 030-01

Dear Mr. Machado:

This office has completed its investigation of the above-referenced matter. Because your conduct reflected a disregard of certain ethical standards under the District of Columbia Rules of Professional Conduct (the "Rules"), we are issuing you this Informal Admonition pursuant to Rule XI, §§ 3, 6, and 8 of the District of Columbia Court of Appeals' Rules Governing the Bar.

This matter was docketed for investigation on January 26, 2001, based upon a January 19, 2001 order to show cause why you should not be held in contempt for failing to comply with the District of Columbia Court of Appeals ("the Court") orders to transmit documents to your client's successor counsel.

On February 14, 2001, you responded to the allegations. You state that you were unaware that successor counsel had not received your former client's transcript until November 2000, when the Court informed you that successor counsel had not filed an appellate brief because he never received the transcript. You state that you had mailed the transcripts to successor counsel in February 2000, and that you hand-delivered a copy of the transcripts to him in November 2000. You state that you were surprised when the Court issued the show cause order. You state that you unsuccessfully attempted to speak with successor counsel about the Court's order. You state that on February 5, 2001, at the show cause hearing, you learned that successor counsel did not have the entire transcript. You state that you forwarded the entire content of the client file to him and that you have no knowledge of any missing transcript volume.

On February 15, 2001, the Court vacated the show cause order upon your representation that you turned over all the transcripts in your possession.

On February 21, 2001, this office requested that you explain why (1) you did not file a brief in the Garcia case after several Court orders directing you to do so, (2) you delayed sending the

transcripts to successor counsel when you were removed as counsel in October 1999, and (3) you failed to respond to the Court's December 12, 2000 order to show cause why you should not be held in contempt. We requested your response within ten days of the date of the letter, but we did not receive a response within that time. On March 7, 2001, you informed us that you would respond by March 8<sup>th</sup>, but did not. On March 13 and 15, 2001, we left voicemail messages for you. On March 16, 2001, we e-mailed you requesting your immediate response to our February 21<sup>st</sup> letter.

On March 20, 2001, you replied to this letter. You state that you did not respond to the Court orders because you believed that the Court would replace you as Court-appointed counsel without repercussions, as it had done with counsel in other cases. You state that you delayed providing the transcripts to successor counsel because you could not remember the name of the attorney and you misplaced the order appointing him. You state that you temporarily lost the transcripts. You state that you found the file with the transcripts during your move to a new office in early 2000, realized that you had forgotten to forward them, and sent them to successor counsel. You state that you did not respond to the December 12, 2000 order because you thought it was sent in error because you had already sent what you believed to be the complete transcript in November 2000. You state that you did not realize your mistake until the February 5, 2001 hearing when you learned that successor counsel did not have the full transcript.

We find as follows. On August 28, 1998, the Court appointed you counsel for Mr. Garcia's appeal. On April 19, 1999, the Court ordered that appellant file his brief within 40 days of the date of the order. On June 16 and August 3, 1999, the Court ordered the brief filed or counsel to file a motion to file the brief out-of-time. You did not file a brief or a motion to enlarge the time to do so. On October 5, 1999, the Court removed you as counsel, appointed successor counsel, and ordered you to transmit all documents in the case to him. On February 7, 2000, the Court ordered you to comply with its October 5, 1999 order. Court records show that successor counsel moved for extensions of time to file the brief because you did not forward the transcripts to him. On January 19, 2001, the Court ordered you to show cause why you should not be held in contempt for failure to comply with the Court's orders. This order was vacated on February 15, 2001, after you appeared before the Court and represented that you had complied with the Court's order to transfer the file material.

Rule 1.16(d) states, "In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, ... surrendering papers and property to which the client is entitled ...." We find that your failure to promptly turn over Mr. Garcia's transcripts as required by the Court order and the Rules of Professional Conduct violates Rule 1.16(d). The failure to notify your client of your intent to withdraw from his case also violates Rule 1.16(d).

Rule 1.1(a) states, "A lawyer shall provide competent representation to a client." Rule 1.1(b) states, "A lawyer shall serve a client with skill and care commensurate with that generally afforded

to clients by other lawyers in similar matters.” Rule 1.3(a) states, “A lawyer shall represent a client zealously and diligently within the bounds of the law.” Your failure to proceed expeditiously with filing appellant’s brief or to file a motion to withdraw violates Rules 1.1(a), 1.1(b) and 1.3(a)

Rule 1.3(b)(1) states, “A lawyer shall not intentionally fail to seek the lawful objectives of a client through reasonably available means. . . .” You violated this Rule when you intentionally failed to pursue your client’s interests by failing to file a brief or moving to withdraw from the case. Rule 1.3(c) states, “A lawyer shall act with reasonable promptness in representing a client.” You violated this Rule by failing to file the brief and not taking any action on your client’s behalf after the Court ordered you to file the brief.

Rule 1.4(a) states, “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” Rule 1.4(b) states, “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” You violated Rule 1.4(a) and (b) because of your failure to communicate with your client, particularly your failure to tell your client of your decision to stop working on his case.

Rule 8.4(d) states, “It is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice.” Your failure to respond to the Court delayed the consideration of your client’s case and the appointment of new counsel. Failing to move to withdraw may not be excused by your belief that the Court would remove you. It is your ethical responsibility to respond to the Court when you are counsel of record and to apprise your client and the Court if you wish to be removed as appellate counsel. Your failure to respond promptly to our February 21<sup>st</sup> letter and to the Court’s order to show cause also violates Rule 8.4(d). Your delay in responding needlessly delayed both our investigation and the Court’s resolution of this matter.

This letter constitutes an Informal Admonition pursuant to Rule XI, §§ 3, 6, and 8 of the Rules of the District of Columbia Court of Appeals Governing the Bar. Please refer to the attachment to this letter of Informal Admonition for a statement of its effect and your right to have it vacated and have a formal hearing before a Hearing Committee. Such a hearing could result in a recommendation to dismiss the charges against you or a recommendation for a finding of culpability, in which case the sanction recommended by the Hearing Committee is not limited to an Informal Admonition.

John T. Machado, Esquire  
Machado/Bar Counsel; Bar Docket No. 030-01  
Page 4

This Informal Admonition will become public 14 days from the above date, if you do not request a hearing. If you wish to have a formal hearing, you must submit a request in writing to the Office of Bar Counsel, 515 Fifth Street, NW, Building A, Room 127, Washington, DC 20001, with a copy to the Board on Professional Responsibility, within 14 days of the date of this letter, unless Bar Counsel grants an extension.

Sincerely,

/s/

Joyce E. Peters  
Bar Counsel